

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

EDWIN RANDAL COSTON, also  
known as ALLAH,

Defendant.

NO: 2:13-CR-0112-TOR

ORDER DENYING DEFENDANT'S  
MOTION UNDER 28 U.S.C. § 2255

BEFORE THE COURT is Defendant's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence. ECF No. 213. Defendant is proceeding *pro se*. The Court has reviewed the record and files herein and is fully informed. Because the files and records of the case conclusively show that Defendant is entitled to no relief, the Government was not ordered to respond. *See* 28 U.S.C. § 2255(b). For the reasons discussed below, the Court **denies** the motion to vacate.

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1 **BACKGROUND**

2 On March 26, 2014, a jury found Defendant guilty of mailing a threatening  
3 communication in violation of 18 U.S.C. § 876(c). ECF No. 116. On June 30,  
4 2014, Defendant was sentenced to 41-months imprisonment consecutively to  
5 Defendant's terms of imprisonment in docket numbers: 01-1-09176-6; 01-1-  
6 10807-3; and 02-1-02047-6, King County Superior Court. ECF No. 148.  
7 Defendant's federal sentencing guideline calculation resulted in a total offense  
8 level 18, criminal history category VI, with an advisory imprisonment range of 57  
9 to 71 months. ECF No. 149.

10 On June 22, 2022, Defendant filed the instant motion seeking "immediate  
11 release" apparently because one or more of his prior state drug possession  
12 convictions had been vacated. ECF No. 213.

13 **DISCUSSION**

14 The Court finds that the issues raised do not require an evidentiary hearing.  
15 *See* Rule 8, Rules—Section 2255 Proceedings. The transcripts, records and  
16 materials filed in this proceeding adequately document the issues for resolution.

17 The Court first considers Defendant's motion pursuant to Rule 4 of the  
18 Rules Governing Section 2255 Proceedings. Rule 4 provides that the Court "must  
19 promptly examine [the motion]. If it plainly appears . . . that the moving party is  
20 not entitled to relief, the judge must dismiss the motion . . ."

1       **A. Motion to Vacate, Set Aside or Correct Sentence**

2           Title 28 U.S.C. § 2255 provides four grounds under which a federal court  
3 may grant relief to a federal prisoner who challenges a sentence of incarceration:  
4 (1) “that the sentence was imposed in violation of the Constitution of laws of the  
5 United States;” (2) “that the court was without jurisdiction to impose such  
6 sentence;” (3) “that the sentence was in excess of the maximum authorized by  
7 law;” and (4) that the sentence “is otherwise subject to collateral attack[.]” 28  
8 U.S.C. § 2255(a). The Supreme Court has repeatedly interpreted this to encompass  
9 only errors that constitute a “fundamental defect which inherently results in a  
10 complete miscarriage of justice” or “an omission inconsistent with the rudimentary  
11 demands of fair procedure.” *United States v. Timmreck*, 441 U.S. 780, 783 (1979)  
12 (quoting *Hill v. United States*, 368 U.S. 424, 428 (1962)). While the remedy is in  
13 this sense comprehensive, it does not encompass all claimed errors in conviction  
14 and sentencing. *United States v. Addonizio*, 442 U.S. 178, 185 (1979). Generally,  
15 motions pursuant to § 2255 must be filed within one year from “the date on which  
16 the judgment of conviction becomes final.” 28 U.S.C. § 2255(f)(1). However, the  
17 statute also authorizes filing within one year of “the date on which the facts  
18 supporting the claim or claims presented could have been discovered through the  
19 exercise of due diligence.” *Id.* § 2255(f)(4).

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1           In *Johnson v. United States*, the Supreme Court held that “the one year  
2 period begins when a petitioner receives notice of the order vacating the prior  
3 conviction, provided that he has sought it with due diligence in state court, after  
4 entry of judgment in the federal case with the enhanced sentence.” 544 U.S. 295,  
5 298 (2005). The fact of the state-court order sets “the 1-year period running only if  
6 petitioner has shown due diligence in seeking the order.” *Id.* at 302.

7           In *Johnson*, the defendant was sentenced under the Armed Career Criminal  
8 Act (ACCA), 18 U.S.C. § 924(e), which provides for a mandatory minimum 15-  
9 year sentence for possession of a firearm rather than “not more than 10-years”  
10 based upon three or more prior convictions for a “serious drug offense” or a  
11 “violent felony.” The underlying premise in *Johnson* was that the Supreme Court  
12 previously held “that a defendant given a sentence enhanced for a prior conviction  
13 is entitled to a reduction if the earlier conviction is vacated.” *Id.* at 303 (citing  
14 *Custis v. United States*, 511 U.S. 485 (1994); *Daniels v. United States*, 532 U.S.  
15 374 (2001)). The Supreme Court ultimately held that Johnson had not acted with  
16 due diligence by waiting more than three years to seek vacatur of his underlying  
17 state conviction. *Id.* at 311.

18           Both *Custis* and *Daniels* involved the statutory sentencing enhancement  
19 provided by the ACCA. Challenges to such sentences are cognizable under 28  
20 U.S.C. § 2255 if a predicate conviction is vacated because section 2255 authorizes

1 claims that a sentence was imposed “in excess of the maximum authorized by  
2 law.”

3 Here, Defendant has not shown that his sentence was imposed “in excess of  
4 the maximum authorized by law”, it is a below the guideline sentence. Whether  
5 his prior state drug conviction(s) is counted or not, Defendant faced the same  
6 statutory penalty. Defendant’s statutory maximum and minimum penalties did not  
7 change upon the finding that he had prior state drug possession convictions. The  
8 Guidelines are advisory, not binding on the Court’s sentencing discretion. *United*  
9 *States v. Booker*, 543 U.S. 220 (2005). This fact distinguishes the holdings in  
10 *Custis*, *Daniels*, and *Johnson* from Defendant’s circumstances.

11 Defendant had a valid expectation that his sentence would not be more than  
12 the statutory maximum, regardless of the advisory Guideline calculation.  
13 Defendant did not have a legally enforceable right to be sentenced within a certain  
14 Guideline range, as the range is advisory and the court must also consider the  
15 § 3553(a) factors. *See Irizarry v. United States*, 553 U.S. 708, 713-14 (2008)  
16 (stating any expectation subject to due process protection that a criminal defendant  
17 would receive a sentence within the presumptively applicable Guideline range did  
18 not survive *United States v. Booker*). Nonconstitutional sentencing errors that have  
19 not been raised on direct appeal have been waived and generally may not be  
20 reviewed by way of 28 U.S.C. § 2255. *United States v. Schlesinger*, 49 F.3d 483,

1 485 (9th Cir. 1994). Computational errors in a presentence report do not give rise  
2 to a constitutional issue. *United States v. McMullen*, 98 F.3d 1155, 1157 (9th Cir.  
3 1996). Neither the Ninth Circuit Court of Appeals nor the Supreme Court has  
4 extended the rationale of *Custis*, *Daniels*, or *Johnson* to apply to advisory  
5 Guideline calculations for cases on collateral review.

6 Accordingly, Defendant has not established a constitutional violation or  
7 other right to relief.

### 8 **B. Certificate of Appealability**

9 A petitioner seeking post-conviction relief may appeal a district court's  
10 dismissal of the court's final order in a proceeding under 28 U.S.C. § 2255 only  
11 after obtaining a certificate of appealability ("COA") from a district or circuit  
12 judge. 28 U.S.C. § 2253(c)(1)(B). A COA may issue only where the applicant has  
13 made "a substantial showing of the denial of a constitutional right." *See id.*  
14 § 2253(c)(2). To satisfy this standard, the applicant must "show that reasonable  
15 jurists could debate whether (or, for that matter, agree that) the petition should  
16 have been resolved in a different manner or that the issues presented were adequate  
17 to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S.  
18 322, 336 (2003) (internal quotation marks and citation omitted).

1 The Court concludes that Defendant is not entitled to a COA because he has  
2 not demonstrated that jurists of reason could disagree with this Court's resolution  
3 or conclude the issues presented deserve encouragement to proceed further.

4 **ACCORDINGLY, IT IS HEREBY ORDERED:**

5 1. Defendant's Motion to Vacate, Set Aside, or Correct Sentence under 28

6 U.S.C. § 2255 (ECF No. 213) is **DENIED**.

7 2. The Court further certifies that there is no basis upon which to issue a

8 certificate of appealability and the same is **DENIED**. 28 U.S.C. § 2253(c);

9 Fed. R. App. P. 22(b).

10 The District Court Executive is hereby directed to enter this Order and  
11 furnish copies to the parties (including mailing this to the Defendant addressed to  
12 "Allah Allah" at the Washington State Penitentiary). This file and the  
13 corresponding civil file (2:22-CV-0150-TOR) shall be **CLOSED**.

14 DATED June 27, 2022.



A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE  
United States District Judge